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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1946

No. 990

MORTON FRIEDMAN, *Petitioner,*

v.

LEWIS B. SCHWELLENBACH, individually and as Secretary of Labor, HARRY B. MITCHELL, FRANCES PERKINS and ARTHUR S. FLEMMING, individually and as members of the Civil Service Commission.

## REPLY TO GOVERNMENT'S OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI.

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PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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A. The Government's opposition at page 10 states "we do not understand him (petitioner) to challenge the legality of the Civil Service Rule pursuant to which he was removed . . ." This is a complete misunderstanding of the position taken in our petition as set forth in pages 16-18 thereof. Our position is briefly as follows:

1. The Civil Service Commission can adopt only procedural regulations. As stated at page 17 of our petition "In order to be valid language in such War Service Regulation making 'reasonable doubt as to loyalty' a ground for dismissal must be construed as a shorthand restatement

of the statutory prohibitions..." concerning employment of persons belonging to organizations advocating the overthrow of the Government. It is clearly our position that the standard "reasonable doubt as to loyalty" should be so construed and in that case petitioner was illegally dismissed.

2. However, if the standard is not to be construed as petitioner believes proper, but is to be broadly construed as the government contends, then the disqualification for "reasonable doubt as to loyalty" becomes a substantive rule beyond the power of the Commission to adopt. In that event the analysis set forth at pages 7-12 of the brief of the United Public Workers *amicus curiae* demonstrates the lack of power of the Commission, and the illegality of its rule.

B. The Government attempts to explain away the clear conflict between the *Wickersham* case, 201 U. S. 390, and the opinion of the Court below by pointing out that the *Wickersham* case involved a failure of the Government officials to follow procedural requirements prescribed by statute in dismissing the employee, whereas in the instant case the procedural requirements were followed. See note 5, page 13 of Government's Brief in Opposition. If the *Wickersham* case is to be limited to protect only procedural rights and to deny to Government employees the protection of substantive rights granted them by statute, it is submitted that the departure is of such significance that it should be made only by this Court.

C. The Government's discussion of the Communist party line (see pages 14-20, 26-31, of its opposition) is a mere smokescreen. It is clear on the record that the petitioner has not been charged with membership in the Communist party or with advocating the overthrow of the Government. R. 23, ¶ 9. The emphasis in the Government's brief on guilt by implication and determinations by Civil Service Commissioners that persons are "potentially disloyal" (see

note 8, page 17) emphasizes the need stressed in our petition to declare that the Civil Service Commission has no power to define loyalty and that its regulations must be restricted to the statutory definitions of loyalty adopted by the Congress.

Respectfully submitted,

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